

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CYRIL MURRAY

v.

THE UNITED STATES OF AMERICA

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CIVIL ACTION NO. 14-CV-01076

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the United States of America¹, by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorney, and hereby files this Notice of Removal. In support of thereof, the United States offers as follows:

1. Tsao-Chuen Ku, D.M.D. is a Defendant in a civil action filed on November 10, 2014, in the Justice Court, Precinct 4, of Travis County, Texas, styled *Cyril Murray v. Tsao-Chuen Ku*, Cause No. J4-CV-14-002468.

2. Copies of the Plaintiff's Original Petition and the Citation served upon Defendant Dr. Ku in the state court action are attached to this notice in accordance with 28 U.S.C. §1446(a). See Exhibit 1, PLAINTIFF'S ORIGINAL PETITION AND CITATION. No trial has been set or conducted in this action.

3. At all relevant times with respect to the allegations contained in Plaintiff's Original Petition, Dr. Ku was acting within the course and scope of her federal employment with the U.S. Department of Veterans Affairs. See Exhibit 2, Declaration of William Ricks, D.D.S.; see also Exhibit 3, CERTIFICATION OF JOHN PANISZCZYN. The state court action is one which

¹ Substituted as defendant in this matter under 28 U.S.C. § 2679.

may be removed without bond to this Court pursuant to 28 U.S.C. § 1441(a), 1442, 1446, and 2679(d) for the following reasons:

- a. The Plaintiff in such action seeks judgment for damages resulting from alleged negligence by Dr. Ku;
- b. At the time of the alleged negligence, Dr. Ku was acting within the course and scope of her employment with the U.S. Department of Veterans Affairs, a federal agency; and
- c. Dr. Ku is therefore covered under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2401(b), and 2671-2680, and the remedy against the United States provided by the FTCA is therefore exclusive of any other civil action or proceeding against the Defendant for money damages by reason of this subject matter.²

4. A copy of the Notice of Filing of Notice of Removal (which is being contemporaneously filed with the state district court) is attached. *See Exhibit 4* (attachments

² The Federal Employees Liability Reform and Tort Compensation Act, codified at 28 U.S.C. § 2679 (also known as the Westfall Act), immunizes United States employees from liability for their negligent or wrongful acts or omissions while acting within the scope of their office or employment. Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, the Westfall Act requires the substitution of the United States as the defendant, and, if the action was originally filed in state court, the removal of the action to federal court. *See Id*; *see also* 28 C.F.R. § 15.4(b). Under the Westfall Act, the substitution of the United States leaves the plaintiff with a single avenue of recovery, which is the FTCA. *See* 28 U.S.C. § 2679(d)(4); *Mitchell v. Carlson*, 896 F.2d 128, 130 (5th Cir. 1990) (“Once the case is in federal court, the federal district court is required to substitute the United States as defendant in place of the federal employee, and the case proceeds ‘in the same manner as any action against the United States’, i.e. as a claim under the Federal Tort Claims Act.”)

omitted).

WHEREFORE, PREMISES CONSIDERED, Cause No. J4-CV-14-002468, now pending in the Justice Court, Precinct 4, of Travis County, Texas is removed to this Court for all further proceedings.

Respectfully submitted,

ROBERT PITMAN
UNITED STATES ATTORNEY

By: /s/ Mark Guerrero
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ATTORNEYS FOR DEFENDANT,
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I certify that on December 1, 2014, the foregoing Notice of Removal was served on the Plaintiff, who is proceeding pro se in the case, via U.S. Certified Mail, Return Receipt Requested.

Cyril Murray
8520 White Ibis Drive
Austin, Texas 78729

/s/ Mark Guerrero
MARK GUERRERO
Assistant United States Attorney